

Minutes of the Board of Adjustment meeting held on Monday, April 12, 2010, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Joyce McStotts, Chair  
Rosi Haidenthaller  
Wendell Coombs, Jr.  
Connie Howard  
Chad Wilkinson, Community Development Planner  
Tim Tingey, Community & Economic Development Director  
Citizens

Excused: Jonathan Russell, Vice-Chair

There was a staff review meeting held at 5:15 p.m. where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

### APPROVAL OF MINUTES

Joyce McStotts asked for additions or corrections to the minutes of March 8, 2010. Rosi Haidenthaller made a motion to approve the minutes as written. Wendell Coombs seconded the motion.

Voice vote was taken. Minutes approved 4-0.

### CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

Mrs. McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property, is based on state outlined criteria, and that financial issues are not considered a hardship.

### CASE #1401 – MARTIN & JOYE DEJONG – 48 West Creek Drive – Project #10-132

Martin and Joye DeJong were present to represent this request. Chad Wilkinson reviewed the location and request for a side yard setback variance to the R-1-8 zoning requirements. Murray City Code Section 17.100.080 requires a minimum side yard width of 8 feet for interior side yards on corner lots. The proposed variance is for an existing addition to a home that was constructed without a building permit. The addition does not meet the minimum side yard setback of 8 feet required by the zoning ordinance for the R-1-8 zoning district. The existing setback to the addition is approximately 2 feet 9 inches. Based on a review of the subdivision plat for the property, it does not appear that there are any existing utility easements along the east property line that would impact the addition. The City became aware of the structure during review of a variance request for the neighboring property. The City sent a letter to the applicant in March 10, 2010 explaining the options available to the applicant to either remove the structure, or to seek a variance. It is unclear when the addition was constructed, however, based on the applicant's submitted narrative and plans submitted to the City, it appears that the addition existed as a covered patio that was enclosed by the owner. The City has plans on record submitted by the applicant in 1983 in support of a front yard setback variance. The site plan submitted shows an 8 foot setback along the east property line in accordance with Code in place at the time. A copy of the original site plan was given to the Board members. Although the variance was approved for the addition to the front of the house, the plans did not show an addition on the east side and no variance was approved for any construction on the east side. Based on the information shown on the 1983 site plan it is likely that the patio area existed prior to 1983 and was enclosed at a later date subsequent to the 1983 variance application. The City

does not have any record of a building permit for enclosing the addition on the east side. Based on the standards applicable in the early 1980's a building permit would have been required to enclose the patio. The applicant submitted a written response which indicates that one of the purposes of the structure was to provide some protection from baseballs hit into the yard from the adjacent ballpark and another purpose was to secure more privacy since the home is located directly to the south of Grant Park.

There are two special circumstances that apply to the property that do not apply to other properties zoned R-1-8. First, the property is a corner lot which requires 20-25 feet of setback from the road on two of the four sides. This reduces the overall building area of the lot when compared to other lots in the R-1-8 zoning district. This was the special circumstance that was used to justify the previously granted front yard variance. The second circumstance is related to the neighboring baseball field. The applicant has indicated that the baseball diamond has created issues with balls being hit into the property. Although there are other properties in the City that are located near athletic fields, this is not a common circumstance for the majority of properties zoned R-1-8. A variance to the side yard setbacks was recently denied for the property to the east. The variance requested is related to structural setbacks for an existing building and is therefore associated with the subject property. Based on review and analysis of the application material, subject site and surrounding area, the applicable Murray Municipal Code sections, Community and Economic Development staff finds that the proposal does not meet all of the standards for a variance and therefore recommends denial.

Mr. Wilkinson stated that the staff received an email from Pam Hansen, indicating her support for the variance requested and that there have never been neighbor complaints or concerns for this matter and the DeJongs were one of the original homeowners of the subdivision. She expressed concern about the DeJongs home being a concern where there are other numerous violations throughout the city.

Martin DeJong, 48 West Creek Drive, stated the adjacent ballpark has been the problem. He stated they had a 42-inch high fence on the property line and there was previously no fence for the ballpark. As a result many balls came into their property. He stated he could not build a patio on the west side of the home due to the balls coming into his yard area. He stated that there have been children and adults hit by the balls in his yard. He stated that the neighbors petitioned the city to install the existing ballpark fence which took 10 years before it was installed. He stated that he built the patio on the east side of the home in the 1960's and he did not know about the required 8 foot side yard setback, but he was more concerned about his children's safety.

Rosi Haidenthaller stated the site plan from 1983 shows there were no structure on the east side of the property. Mr. DeJong responded the patio was there before 1983 and was built in the 1960's when the Stake farm burned down on 300 West and he watched the farm burn as he was putting the roof onto the patio addition.

Joyce McStotts asked Mr. DeJong if he had any comments regarding the criteria necessary in order to obtain a variance as outlined by state law.

Rosi Haidenthaller explained that the ballpark may be a hardship for the DeJong's property, but is questionable whether that issue alone could substantiate granting of a variance. She stated in 1983 when the DeJong's applied for the front setback variance, and at that time they were probably made aware that a building permit was necessary for the addition. She stated that it is difficult for the Board to ignore the fact that a building permit was not taken out for a previous addition which is now out of conformance.

Wendell Coombs stated when the variance was granted in 1983, normally it would have been discovered when a city inspector inspected the property, yet Mr. DeJong has indicated this patio addition was built in the 1960's and a building permit was issued on the addition. He stated in some respects the hardship may have been that the noncompliance wasn't brought to the DeJong's attention during the original application for the building on the front yard setback in 1983.

Chad Wilkinson stated that the difficulty of this application is that the staff can only make a recommendation based on the information available, and cannot assume anything. The record shows an 8 foot and 10 foot setback in the area and there is no record of a building permit from the 1960's for the structure. There is a building permit in 1983 for the west side addition. He stated that Mr. DeJong has indicated the patio addition was done in the 1960's, but there is no way to substantiate that with the evidence available.

Martin DeJong stated when he applied for the variance on the front of the home; the application asked that the measurements be taken from the "house". At that time he did not think the patio was the "house" and therefore the patio was not included in the setback measurements.

Joye DeJong stated it is a hardship living adjacent to a ballpark. She stated that they have had to deal with noise from the ballpark from 7 a.m. to 9 p.m. six days a week and there have been playoff tournaments with congested parking, etc. She stated that the city never notified them that the ballpark was even going to be constructed nor did the city ask the neighbors for their input.

No comments were made by the public.

Wendell Coombs commented that this is a difficult request. He stated the patio addition is a very nice addition and has been well constructed, but the Board must meet the state law and requirements for granting a variance and the adjacent property to the east was denied a variance a couple of months ago for a similar setback request. He stated that he personally struggles with being able to grant a variance but the addition is a nice addition and would be a great expense to remove it. However, expenses and costs cannot be considered in determining a variance. The Board of Adjustment is not a legislative body and cannot change the law, but must impose the law as written.

Joye DeJong stated this is different from Mr. Fenstermacher's because their addition is not to the property line, whereas Mr. Fenstermacher's addition was to the property line.

Rosi Haidenthaller commented that the close proximity of the baseball park may impose a hardship and the DeJong's have indicated and they have a difficult time even eating outside in the summer months, in addition to the noise and stray baseballs. In order for the DeJong's to be able to enjoy their property they enclosed the patio which is also a safety issue.

Martin DeJong stated that the adjacent baseball field is a safety issue for their property and if one of the baseballs were to hit him in the head he would die as a result of him being exposed to radiation in Hiroshima from World War II.

Joyce McStotts commented that this is a difficult variance request.

Rosi Haidenthaller made a motion to grant the variance as requested based on the safety issues for this family because of the close proximity to the baseball field. The special circumstances attached to the property are that the property is a corner lot in addition to being adjacent to the baseball field; that the residents are unable to enjoy their property because of the safety issue of being outside; the literal enforcement of requiring the DeJong's to tear down

the home addition will cause a hardship. Wendell Coombs seconded the motion and stated his second is based on the corner lot is unique from the adjacent neighbors request (Mr. Fenstermacher) and there is a smaller buildable area.

Call vote recorded by Chad Wilkinson.

A Ms. Haidenthaller

A Mr. Coombs

N Ms. Howard

N Ms. McStotts

Motion failed with a 2-2 vote.

Connie Howard commented that the property is a corner lot and that a previous variance had been granted for the front (west) side of their property in order to utilize their property and is unique to living on a corner lot. There is area of the DeJong's property they utilize (the front yards) that is not adjacent to the ball field. The adjacent neighbor, Mr. Fenstermacher, built to the property line and his variance was denied, and the DeJong's request is only 2 feet 9 inches from the property line and is practically at the property line and as a buyer or consumer of real estate she would not like to own a home that is built practically to the property line. Ms. Howard commented that the Board has been very mindful in the past with trying to maintain the required setbacks and maintain privacy between properties. She stated the implied hardship for the DeJong's in the rear yard area can be accommodated by utilizing the front yards and it is not good for the Board to allow the addition with a 2 foot 9 inch setback to remain. She stated that she sees an injustice with the fact that the addition has been there for a long period of time and the DeJong's have used the addition for many years, but now it has become an issue and she does not see a hardship associated with the variance request.

Connie Howard made a motion that the variance be denied because the DeJong's have not met the hardship analysis and that allowing the DeJong's to keep the addition would be contrary to the planning and zoning ordinances and their particular yard has received variances based on its uniqueness, but that uniqueness does not carry forward to this particular addition. Seconded by Wendell Coombs.

Call vote recorded by Chad Wilkinson.

N Ms. Haidenthaller

A Mr. Coombs

A Ms. Howard

A Ms. McStotts

Motion passed with a 3-1 vote.

Connie Howard made a motion to approve the Findings of Fact for Case #1401, Martin & Joye DeJong as written. Seconded by Wendell Coombs.

Voice vote was taken. Motion passed 4-0.

CASE # 1402 – MOUNTAIN MEDICAL – 5323 South Woodrow Street, Project #10-139

Lyle Beecher with Beecher, Walker Architects was present to represent this request. Chad Wilkinson reviewed the location for a building height variance for a new building addition on the existing medical building which is legal nonconforming regarding building height at the property addressed 5323 South Woodrow Street. Murray City Code Section 17.144.100 states "Height Regulations: The Height of a structure located within one hundred feet of the nearest boundary of a residential zone district may not exceed 30 feet." Code Section 17.52.040 B states: "Addition, Enlargements and Moving: A building or structure nonconforming as to height, area or yard regulations shall not be added to or enlarged in any manner or moved to another location on the lot except on a permit authorized by the Board of Adjustment." The current ordinance allows a maximum height of 30 feet to the highest part of the building whereas the previous ordinance in 2002 allowed the building height to be 35 feet high within 100 feet of a residential zone boundary. The applicant is requesting the building height variance in order to match the height of the existing building with the new addition. There are special circumstances related to this property and building with the existing height of the building at about 35 feet which was legal and approved at the time in 2002. The zoning ordinance changed since that time to allow a maximum height of 30 feet within 100 feet of a residential zone. The adjacent residentially zoned properties are allowed to build to a height of 35 feet. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development staff finds that the proposal meets the standards for a variance and recommends approval of the variance based upon the development meet all zoning, building and fire code requirements and all Murray City Department requirements.

Joyce McStotts asked if the building addition will meet the setback minimums from the residential area. Mr. Wilkinson responded the setback minimums will be met in addition to the 10 foot landscape buffer.

Wendell Coombs asked if the residential property owners were notified of this meeting. Mr. Wilkinson responded that notices were mailed to property owners within 300 feet of the DeJong's home.

Lyle Beecher, 3115 East Lion Lane, Holladay, stated he is the architect representing the owners of Mountain Medical for this variance request. He stated this is a matter of the code changing from the original development to this addition. He stated the eave of the structure is at 25 feet and the mansard roof screens the rooftop mounted heating and cooling units. The majority of the building would only be one foot (31 foot) over the present maximum height of 30 feet, with exception of the entry way.

No comments were made by the public.

Rosi Haidenthaller commented that there are no residents present to respond to this variance request.

Wendell Coombs made a motion to grant the height variance as requested subject to the condition that the building meet all zoning, building and fire code requirements and all Murray City Department requirements for the new building addition. He commented that the new

addition must also meet the correct number of parking as required by code. Seconded by Connie Howard.

A Mr. Coombs

A Ms. Haidenthaller

A Ms. McStotts

A Ms. Howard

Motion passed 4-0.

Wendell Coombs made a motion to approve the Findings of Fact for case # 1402 for Mountain Medical as written. Seconded by Rosi Haidenthaller.

A voice vote was taken. Motion passed, 4-0.

#### OTHER BUSINESS

Rosi Haidenthaller commented that this is Wendell Coombs last meeting as a member of the Board of Adjustment and that his term(s) have expired and also that Ms. Howard has resigned as a member of the Board due to other obligations and time constraints. Ms. Haidenthaller thanked Mr. Coombs and Ms. Howard for their years of dedicated service.

Meeting adjourned.

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Tim Tingey

Director of Community & Economic Development